

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WILT,

Plaintiff,

v.

PFIZER, INC.,

Defendant.

Case No. 2:24-cv-2058-DJC-JDP (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff David Wilt alleges in his first amended complaint that defendant Pfizer, Inc.’s third vaccination caused him illness. Since plaintiff has only alleged a state law claim and this court lacks jurisdiction, I recommend that plaintiff’s complaint be dismissed without leave to amend.

**Screening and Pleading Requirements**

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its

face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

### Allegations

The amended complaint alleges that plaintiff became sick for a nearly a year after he received defendant’s third round of the COVID-19 vaccination. ECF No. 4 at 5. Plaintiff alleges one cause of action: California’s Deceptive Trade Practice Act (“CDTPA”).<sup>1</sup> *Id.* at 4.

The amended complaint asserts that this court has subject matter jurisdiction based on federal question. *Id.* at 3. However, plaintiff has not alleged a federal claim; he has alleged only

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<sup>1</sup> Even if the court were to consider the merits of plaintiff’s allegation, the Court of Appeals has found that claims against vaccine manufacturers like defendant for bodily harm arising from COVID-19 vaccines are barred by the Public Readiness and Emergency Preparedness Act (“PREP Act”). *See Gieser v. Moderna Corp.*, No. 1:24-cv-0458-JLT-CDB, 2024 WL 4190086 (E.D. Cal. Sept. 13, 2024) (finding claim for physical injury arising from Moderna COVID-19 vaccine barred under the PREP Act and, if excepted from such immunity, the court lacked subject matter jurisdiction); *T.C. by & through Cabaniss v. Pfizer, Inc.*, No. 22-cv-01242-WQH-AHG, 2022 WL 17578871, at \*2 (S.D. Cal. Nov. 9, 2022) (finding claim for injury from COVID-19 vaccine barred under the PREP Act).

1 a state law claim. Therefore, this court's jurisdiction depends on diversity jurisdiction. *See* 28  
2 U.S.C. §§ 1331, 1332; *see also Rainero v. Archon Corp.*, 844 F.3d 832, 839 (9th Cir. 2016) ("For  
3 a federal court to exercise diversity jurisdiction under § 1332(a), the amount in controversy must  
4 exceed \$75,000, and the parties must be citizens of different states."). Diversity jurisdiction  
5 exists in all civil actions in which there is complete diversity of citizenship of the parties and the  
6 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. While the amended complaint  
7 alleges diversity of citizenship, it fails to allege any amount in controversy. ECF No. 4 at 4.  
8 Thus, plaintiff's allegations reflect that the amount in controversy is lacking.

9 I find that granting plaintiff further opportunities to amend would be futile. *See Schucker*  
10 *v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988) (per curiam) ("Dismissal of a pro se  
11 complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of  
12 the complaint could not be cured by amendment.") (internal quotation marks and citations  
13 omitted); *California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th  
14 Cir. 1988) ("Valid reasons for denying leave to amend include undue delay, bad faith, prejudice,  
15 and futility."). Accordingly, I recommend the amended complaint be dismissed without leave to  
16 amend.

17 Accordingly, it is hereby RECOMMENDED that:

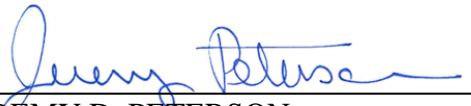
- 18 1. Plaintiff's amended complaint, ECF No. 4, be DISMISSED without leave to amend for  
19 lack of subject matter jurisdiction.
- 20 2. The Clerk of Court be directed to close the case.

21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of  
23 service of these findings and recommendations, any party may file written objections with the  
24 court and serve a copy on all parties. Any such document should be captioned "Objections to  
25 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed  
26 within fourteen days of service of the objections. The parties are advised that failure to file  
27 objections within the specified time may waive the right to appeal the District Court's order. *See*  
28 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.

1 1991).

2  
3 IT IS SO ORDERED.

4 Dated: May 20, 2025

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE